

## INDEX

	Page
<b>MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE</b> .....	<b>I</b>
<b>BRIEF AMICUS CURIAE</b> .....	<b>1</b>
<b>Questions Presented</b> .....	<b>1</b>
<b>Interest of Amicus Curiae</b> .....	<b>1</b>
<b>Argument</b> .....	<b>2</b>
<b>Conclusion</b> .....	<b>10</b>
<b>Certificate of Service</b> .....	<b>11</b>



I.

No. 281

---

In The  
Supreme Court of the United States

OCTOBER TERM, 1970

---

JAMES E. SWANN, ET AL., *Petitioners*

v.

CHARLOTTE-MECKLENBURG BOARD OF  
EDUCATION, ET AL., *Respondents*

MOTION FOR LEAVE TO FILE BRIEF AMICUS  
CURIAE ON BEHALF OF JACKSON CHAMBER  
OF COMMERCE, INC. AND JACKSON URBAN  
LEAGUE

---

NOW COMES Jackson Chamber of Commerce, Inc., a non-profit corporation organized and existing under and by virtue of the laws of the State of Mississippi, and Jackson Urban League, a non-profit corporation organized and existing under and by virtue of the laws of the State of Mississippi, both having their domicile in Jackson, Hinds County, Mississippi, by their attorney, and hereby respectfully move for leave to file the attached brief *amicus curiae*. The consent of the attorneys for the petitioners and the respondents has not been obtained.

These two entities, being both concerned with the welfare of the community within which they principally operate, and being particularly concerned with its economic growth and development, find themselves in common accord on one matter of particular and vital interest to their community, that is — the continued survival and health of the public

II.

school system in the Jackson, Mississippi, area, and, therefore, are deeply concerned with the issues here presented.

The issues here have implications extending far beyond the particular situation now before the Court. Accordingly, these two entities desire the opportunity to present their views on this matter to the Court.

We feel that our contribution should assist the Court in setting the problems here presented in a broader context, thus ensuring a readier grasp of the grave import its decision may have for public school systems throughout the country.

For the foregoing reasons, the movants respectfully request that this motion be granted.

Respectfully submitted,

---

SHERWOOD W. WISE  
925 Electric Building  
Post Office Box 651  
Jackson, Mississippi 39205

WISE, CARTER AND CHILD  
925 Electric Building  
Post Office Box 651  
Jackson, Mississippi 39205  
OF COUNSEL

Attorney for Jackson Chamber of  
Commerce, Inc. and Jackson Urban  
League

No. 281

---

In The

Supreme Court of the United States

OCTOBER TERM, 1970

---

JAMES E. SWANN, ET AL., *Petitioners*

v.

CHARLOTTE-MECKLENBURG BOARD  
OF EDUCATION, ET AL., *Respondents*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

---

BRIEF AMICUS CURIAE ON BEHALF OF JACKSON  
CHAMBER OF COMMERCE, INC. AND JACKSON  
URBAN LEAGUE

---

### QUESTIONS PRESENTED

This case presents questions which go to the very heart of the survival of the public school systems of this country. The questions presented necessarily include the following:

1. Must a school district adopt a plan of integration which demonstratively will result in resegregation?

THE INTEREST OF JACKSON CHAMBER OF  
COMMERCE, INC. AND JACKSON URBAN LEAGUE.

The interest of Jackson Chamber of Commerce, Inc. and Jackson Urban League, as *amicus curiae* is set forth on their motion for leave to file this brief *amicus*, to which motion this brief is annexed.

## ARGUMENT

### A. PRELIMINARY STATEMENT

These two entities, being both concerned with the welfare of the community within which they principally operate, and being particularly concerned with its economic growth and development, find themselves in common accord on one matter of particular and vital interest to their community, that is — the continued survival and health of the public school system in the Jackson, Mississippi area, and have agreed to submit to this Honorable Court certain principles which they believe if adhered to, would reverse the present destructive trends which are taking place not only in the Public School System of Jackson, Mississippi, but in all such systems in the Nation, and for that reason and in that spirit these two entities have come together for the sole purpose of presenting to this Honorable Court for its consideration the following facts and conclusions.

### B. HISTORICAL REVIEW OF COURT DECISIONS

In September of 1969, one year ago, schools of this district opened under what was basically a "freedom of choice" plan. Enrollment showed 18,227 blacks and 20,966 whites. Today, one year and three court ordered plans later, enrollment is 18,396 black and 12,095 white, — a 42.4 per cent decrease in the number of whites. The first court order last fall ordered a desegregation of staff at the beginning of the second semester. On appeal by the NAACP Legal Defense Fund, counsel for the plaintiff, complete desegregation of pupils and staff was ordered at the beginning of the second semester. The District Judge ordered into effect an HEW plan for elementary schools and a plan of his own devising for secondary schools. Plaintiffs appealed this order

as to the secondary plan only. In May the Fifth Circuit Court of Appeals acted on this appeal, ordering into effect an HEW plan for secondary schools. Although there had been no appeal, the Fifth Circuit ordered the District Court to prepare a new elementary plan and ordered the appointment of a Bi-Racial Committee to help devise this plan. The Bi-Racial Committee did devise a plan and, after hearings, this plan was ordered into effect for September. Plaintiffs appealed this order and in their brief made this statement: — "the district court's controlling responsibility is to evaluate that plan, not in terms of its educational soundness, but in terms of its ability to achieve integration."

In August, acting on this appeal, the Fifth Circuit ordered into effect a plan which basically consisted of the pairing and grouping of approximately half the elementary schools. The court stated that this was to be temporary and the District Court was ordered to hold hearings and to prepare a new elementary plan for the second semester, making the fourth disruption in four semesters. The traditional six grade structure for elementary schools has been destroyed and we now have seven different grade-structured types of elementary schools. The traditional 3-3 secondary structure has been destroyed in favor of a 2-1-1-2 structure.

Under court plans presently in effect, 95% of the children in this district will attend six different schools from the first to the twelfth grade. In one extreme case, a small group of children will go to seven schools in twelve years. Or to look at it another way, it is possible for a family with seven children to have them in seven different schools.

Our superintendent, who came to us one year ago from a position as Assistant Superintendent in Atlanta, Georgia,

resigned a month ago, stating that his training, experience, and conscience would not permit him to be responsible for a system over which the court would allow him no control and one which he felt had been made educationally and administratively unsound. This man's imagination and dedication are demonstrated by the fact that this school system was the first in the country to submit a comprehensive plan of educational innovation and to receive a grant under the 75 million dollar emergency fund appropriated this summer. Under state law (dated prior to the *Brown* decision) and reinforced by an opinion from the Attorney General of Mississippi, the local school board has no authority (even if it had the money) to provide intra-city transportation.

### C. RECENT STATISTICS

The following statistics demonstrate forcefully and without further argument precisely what is taking place in the Public School System of Jackson, Mississippi at the present time:

As of September 15, 1969, there were 18,227 black students and 20,966 white students in the Public School System of Jackson, Mississippi, or a total of 39,193 students. The percentage ratio at that time was 47% black and 53% white.

On September 18, 1970, there were in the said school system 18,396 black students and 12,095 white students, or a total of 30,491 students. The percentage ratio at that time was 60% black students and 40% white students.



Thus, it can be seen that with the various court orders as set out in the historical review above, withdrawals of white students have occurred so that from September 15, 1969, to September 18, 1970, the number of white students attending said school system has dropped from 20,966 to 12,095, while over the same period the black students in said system have increased from 18,227 to 18,396. The percentage change over said period of approximately one year has been from 47% black students to 60% black students, and from 53% white students to 40% white students.

Thus, it is self-evident that from September 15, 1969, to September 18, 1970, a serious drift toward resegregation has taken place in the Jackson public school system.

#### D. ECONOMIC IMPACT

A major concern which bears directly on Jackson's education problems is the slowdown which has occurred in the city's economic development. During the past decade the increase in manufacturing employment has only been one half of what was needed.

A critical problem confronting Jackson's development efforts is the school situation. The present instability is preventing a major manufacturer from locating a badly needed large plant in the Jackson area. Neither this company nor many of the other firms which might otherwise come to Jackson can be expected to move into the area.

Paradoxically, Jackson's schools need to be strengthened before it will be possible to attract many of the companies

needed to accelerate the area's economic growth. The need for strengthening the schools was recognized by the School Board when they employed Dr. John Martin as superintendent; his capabilities in the curriculum development field were a major factor in his selection. And that strengthening cannot occur unless economic growth takes place which produces the revenues required. Nor can many of the social problems which confront the families in the lower economic brackets be solved unless more economic development takes place.

We come full circle then. The city's schools cannot be strengthened substantially without a doubling of the area's economic growth rate. The desired economic growth cannot take place without significant improvement in the quality of Jackson's schools. Neither improvement of the schools nor the desired economic development can take place unless the present instability is eliminated and the basic problems involved in the integration of the schools can be worked out.

The importance of this impact is not confined to economics alone. It is obvious that an adverse economic impact on any community brings with it increased social problems and burdens. This community at this time is making heroic efforts to solve social problems by providing better jobs, better housing, and better living conditions for its citizens who are in the lower economic echelons. This requires expenditures of capital. Anything, including the situation we are now concerned with, which adversely affects the economics of this community will adversely affect the efforts now being made to upgrade the living standards of those citizens in this community who are in the lower economic brackets.

## E. CERTAIN PRINCIPLES

We are persuaded that from the experiences of this community, as well as the experiences of communities all over the Nation, certain basic principles have emerged which are worthy of serious consideration.

### 1.

Prior to the court orders which changed the same, the School System of Jackson, Mississippi, operated on what is known as 6-3-3 plan. That is, in the district the elementary schools consisted of the first six grades, the junior high schools consisted of grades seven, eight and nine, and the high schools consisted of grades ten, eleven and twelve. This system worked well and served the needs of the people in the community better than any other system which has ever been devised. There were demonstrable educational advantages, as the breaks which occurred between the three divisions of the system were natural breaks based on age and development of the children. There proved to be less disruption in the life of the individual child. The possibilities of major transportation problems were reduced. It is our firm belief that a return to the 6-3-3 concept is essential.

### 2.

It is our further conviction that if the integration which the courts, by their various decisions and orders have decreed, is to be achieved, it must be done in an orderly manner which will accomplish the courts' purposes without totally wrecking the public school system. In order to accomplish this, it is necessary that the outflow of whites from the public schools be reversed or resegregation is certain to result. It is probable that this trend can be reversed and

many whites who have fled the public schools will return if certain self-evident facts are recognized and are dealt with on a realistic basis.

Experience has shown that depending upon location of the area involved when the ratio of black pupils to white reaches a certain percentage, resegregation has resulted. For each community the resegregation point varies, depending upon the very nature of the community itself. Such consequences have been experienced in numerous American communities, including Washington, D. C., Philadelphia, Pennsylvania, Cleveland, Ohio, and many others. The Jackson statistics quoted above confirm the fact that this trend is presently being experienced in the Jackson Public Schools.

There are many and obvious deleterious by-products of this trend. Support of the public schools is being reduced. As an example, in November of 1969, a bond issue for capital expenditures for public schools in the City of Jackson was defeated by both black and white votes. It is doubtful if any public school bond issue could pass in this area at this time.

Frustration exists in the families of both the black and the white communities in the City, and this frustration is resulting in further polarization of the races.

Once the trend begins of the flight of whites from the public schools, it can normally be expected to accelerate. This statement is based on the experience of this community and others as set out above. In this community the private

schools which now exist, many of which have recently come into being, are overloaded and are expanding their facilities.

## 3.

Should the principles set out above be adhered to, it will then become incumbent upon this community to commit itself unreservedly to an innovative system of superior public education. The time gap which will exist between the frustrations and disruptions mentioned above and some eventual solution to this problem is all important. Steps must be taken immediately which will have the effect of compensating educationally for these frustrations and disruptions during this period.

This community has shown its commitment to these principles in the past. This commitment must continue. In fact, if the trend which is now taking place is to be reversed and the public school system of this area is to be saved, this commitment must be strengthened and the educational processes in the public school system must be enhanced at all levels. There are many things which can be done immediately and in the future to bring this about. We believe that with a reasonable, sensible and workable approach to the overall problem, this community will respond affirmatively in bringing about superior public education for its children. It is our firm conviction that this should be the primary consideration of all of the courts involved, and of all the entities and individuals who are in any wise affected by this overall problem.

## CONCLUSION

We conclude that stability in the schools which will permit them to continue to survive can only be achieved if the principles set out herein are adhered to.

Respectfully submitted,

For The  
**JACKSON CHAMBER OF  
COMMERCE, INC.**

---

President

---

Executive Secretary

For The  
**JACKSON URBAN LEAGUE**

---

President

---

Executive Secretary

---

Board of Directors

---

Board of Directors

---

**SHERWOOD W. WISE, Attorney for  
Jackson Chamber of Commerce, Inc.  
and Jackson Urban League**

**925 Electric Building  
Post Office Box 651  
Jackson, Mississippi 39205**

**WISE, CARTER AND CHILD  
925 Electric Building  
Post Office Box 651  
Jackson, Mississippi 39205  
October 9, 1970**

**CERTIFICATE OF SERVICE**

I, Sherwood W. Wise, the attorney for Jackson Chamber of Commerce, Inc. and Jackson Urban League, *amicus curiae* herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the \_\_\_\_\_ day of October, 1970, I served copies of the foregoing Motion For Leave To File Brief Amicus Curiae and Brief Amicus Curiae on the several parties thereto, as follows:

1. On the petitioners, James E. Swann, et al, by mailing three copies in a duly addressed envelope, with air mail postage prepaid, to their attorney, James Nabrit, III, 10 Columbus Circle, New York, New York 10019.
2. On the respondent, Charlotte-Mecklenburg Board of Education, et al, by mailing three copies in a duly addressed envelope, with air mail postage prepaid, to their attorneys, William J. Waggoner, Weinstein, Waggoner, Sturges & Odom, 1100 Barring Office Tower, Charlotte, North Carolina and Benjamin S. Horack, Ervin, Horack & McCartha, 806 East Trade Street, Charlotte, North Carolina.
3. On the United States of America, *amicus curiae*, by mailing three copies in a duly addressed envelope, with air mail postage prepaid, to its attorney, Erwin Griswold, Esquire, Solicitor General, Department of Justice, Washington, D. C.

It is further certified that all parties required to be served have been served.

---

SHERWOOD W. WISE  
Attorney for Jackson Chamber of Commerce,  
Inc., and Jackson Urban League  
925 Electric Building  
Post Office Box 651  
Jackson, Mississippi 39205